

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

TENTH FLOOR

1333 NEW HAMPSHIRE AVENUE, N.W.

WASHINGTON, D.C. 20036

(202) 801-0870

FAX: (202) 429-0657

OFFICE OF THE

EXECUTIVE SECRETARY

REC'D TN

REGULATORY AUTH.

APR 30 1999 3:30 PM

By Facsimile on April 29, 1999 and by Federal Express for April 30, 1999 AM Delivery

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Docket No. 98-00018
Notice of Revocation of Certification of Minimum Rate Pricing, Inc.

Dear Mr. Waddell:

Attached is Minimum Rate Pricing, Inc.'s Proposed Plan filed in Response to April 27, 1999 Notice of Revocation of Certification of Minimum Rate Pricing, Inc. I request that, due to the shortness of time permitted for filing a plan in response to the April 27, 1999 Notice, that you accept this faxed copy for filing in the above-captioned proceeding. I am sending you the signed original by overnight courier for morning delivery on April 30, 1999.

Please contact me if you have any questions or concerns.

Very truly yours,


Walter E. Diercks

cc: L. Vincent Williams, Esq. (with enclosure) by fax and by first class U.S. Mail
Gary Hotvedt, Esq. (with enclosure) by fax and by first class U.S. Mail
Rochelle Weisburg, Esq. (with enclosure) by fax and by first class U.S. Mail

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**SHOW CAUSE PROCEEDING
AGAINST MINIMUM RATE PRICING,
INC.**

)
)
)
)
)
)

DOCKET NO.:98-00018

**MINIMUM RATE PRICING INC.'S PROPOSED PLAN FILED
FILED IN RESPONSE TO APRIL 27, 1999 NOTICE OF REVOCATION
OF CERTIFICATION OF MINIMUM RATE PRICING, INC.**

Minimum Rate Pricing, Inc. ("MRP"), by and through the undersigned attorneys and pursuant to the Authority's April 27, 1999 Notice of Revocation of Certification of Minimum Rate Pricing, Inc., hereby files its proposed implementation plan to provide continuing service to MRP's existing customers in Tennessee, as well as their transition to a new service.

INTRODUCTION

MRP is a corporation organized and doing business under the laws of the State of New Jersey. MRP is engaged in the business of selling and providing commercial and residential long distance intrastate, interstate and international telecommunications services, calling cards and pager services.

The April 27, 1999 Notice informed MRP that on April 27, 1999 the Directors of the Tennessee Regulatory Authority voted to revoke the certification, effective immediately, of MRP as an operator service provider and a reseller of telecommunications services in the state of Tennessee that had been granted on July 18, 1997. The April 27, 1999 Notice also informed MRP that at the April 27, 1999 Conference the parties were directed to file by 4:30 PM on April 29, 1999

“a joint agreement relative to an implementation plan which is to provide continuing service for MRP’s existing customers as well as their transition to new service.” The Notice further stated “If the parties are unable to reach a mutual agreement, any party may file its own plan by 4:30 PM on April 30, 1999, for consideration by the Authority at its May 4, 1999 Conference.”

On the morning of April 29, 1999 counsel for MRP orally proposed an implementation plan to both counsel for the TRA staff, Gary R. Hotvedt, and counsel for the Consumer Advocate Division (“CAD”), Vincent Williams. Both counsel listened politely but were non-committal. Neither Mr. Hotvedt nor Mr. Williams made any counterproposal.

Because counsel for MRP was unable to even conduct negotiations with counsel for the TRA and the CAD, no less reach an agreement or impasse in those negotiations, MRP is compelled to file its own plan for consideration by the Authority.

MRP’S PROPOSED IMPLEMENTATION PLAN

MRP hereby proposes the following implementation plan in response to the Authority’s April 27, 1999 Notice. MRP’s submission of this implementation plan is not a waiver of any of MRP’s rights to contest the actions of the Authority, including without limitation actions taken at its April 27, 1999 Conference, or the legal authority of the Authority to order MRP to take any particular action. As more fully set forth below in the section entitled “Discussion,” the authority of the Authority is limited by both the bankruptcy laws of the United States and the federal Communications Act.

MRP’s proposed implementation plan is as follows:

MRP will continue to provide service to Tennessee customers while it makes arrangements to transfer the customers to a new carrier. If MRP completes the transition of its Tennessee customers by July 30, 1999, its certification as an operator

service provider and reseller of telecommunications services in the State of Tennessee will be revoked effective July 30, 1999. If MRP cannot complete the transition of its Tennessee customers to a new carrier by July 30, 1999, it will give each Tennessee customer notice on or before July 30, 1999 that MRP is terminating its operations in Tennessee on August 13, 1999 and inform each customer of the need to make arrangements for alternative service. In such latter event, MRP's certification as an operator service provider and reseller of telecommunications services in the State of Tennessee will be revoked effective August 13, 1999.

DISCUSSION

The Authority probably is not aware that a new chief executive officer, Brian Engle, who has been approved by the Bankruptcy Court, took charge of MRP on April 27, 1999.¹ Mr. Engle authorized the proposed implementation plan set forth above in a sincere effort to bring this matter to a swift conclusion, consistent with the logistics of an orderly transition and the need to obtain necessary approvals from the Bankruptcy Court for the transfer of MRP's Tennessee customers to a new long distance service. The July 30, 1999 deadline for MRP to arrange for a transition of its Tennessee customers to a new carrier is realistic one that MRP is committed to meet in order to avoid inconveniencing its customers, while complying with the bankruptcy laws. If for some reason that July 30, 1999 deadline could not be met, MRP would cease operations no later than August 13, 1999.

It is important to emphasize that the MRP's subscriber base is an asset of MRP. As the Authority is well aware, MRP is in bankruptcy. Therefore, any disposition of an asset of MRP, such as its Tennessee subscriber base, is subject to the control and approval of the United States Bankruptcy Court in Newark, New Jersey. Disposition of this asset without the proper approval of the Bankruptcy Court is punishable by contempt and is a crime. Therefore, MRP takes the

¹ Mr. Williams was informed of this fact on April 28, 1999 and Mr. Hotvedt was so informed on the morning of April 29, 1999.

Bankruptcy Court's control and approval of the disposition of its Tennessee subscribers very seriously and urges the Authority to do likewise. The need for Bankruptcy Court approval of the final disposition of MRP's Tennessee subscribers is one of the factors which has caused MRP to propose a plan which provides for a July 30, 1999 deadline for MRP to arrange for new long distance telephone service for MRP's Tennessee subscribers.

There is a second fundamental issue that MRP wishes to address because Mr. Williams has indicated that the TRA staff has been attempting to locate potential providers of long distance telephone service for MRP's subscribers. That second issue is that the Authority only has jurisdiction over MRP's provision of intrastate long distance telephone service in Tennessee.

While the Authority is no doubt well aware of the intrastate/interstate split in jurisdiction, it is worth repeating the fundamental principals here. In 1934, the United States Congress enacted the Communications Act, which defined the scope of Federal regulatory authority over the rapidly-developing communications industry. In enacting the Communications Act, Congress chose to create a system of "dual jurisdiction" over communications. Section 1 of the Communications Act granted to the FCC the exclusive authority to "regulat[e] interstate and foreign . . . communications by wire and radio;" thus providing the FCC with exclusive jurisdiction to regulate the communications industry's effect on interstate commerce. 47 U.S.C. § 151. Section 2(b) of the Communications Act, however, reserved for the states the power to regulate the intrastate aspects of the Communications industry, stating: "nothing in this Act shall be construed . . . to give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier." 47 U.S.C. § 152(b). Thus, pursuant to the dichotomy created by the Communications Act

of 1934, Congress provided the states with the power to regulate the communications industry with respect to matters that were purely intrastate in their effect, while it provided the FCC with the power to regulate the communications industry with respect to matters that in any way affected interstate commerce.

With this intrastate limit on the Authority's jurisdiction in mind, any attempt by the Authority or the TRA staff to switch MRP's long distance subscribers to another carrier without MRP's consent can be seen for what it is: an attempt to regulate interstate long distance telephone service which is prohibited by the Communications Act. Therefore, without the approval and cooperation of MRP, all the TRA can do is order MRP to cease providing intrastate telephone service in Tennessee and take steps to switch MRP's intrastate subscribers to another service which will provide intrastate long distance service to those subscribers.²

The implementation plan being proposed by MRP will avoid all of these problems and result in a speedy implementation of the Authority's goal of removing MRP as a reseller of intrastate long distance telephone service in the State of Tennessee and also will result of MRP's speedy withdrawal as a reseller of interstate long distance telephone service in Tennessee. Under the MRP plan, MRP will cease to be a reseller of intrastate and interstate telephone service in Tennessee no later than August 13, 1999, even if MRP runs into trouble in effecting a transfer of its customer to a new service by July 30, 1999.

The implementation plan set out above is obviously only an outline. This outline was all that could be drafted in the limited time available to prepare a plan as provided by the April 27, 1999

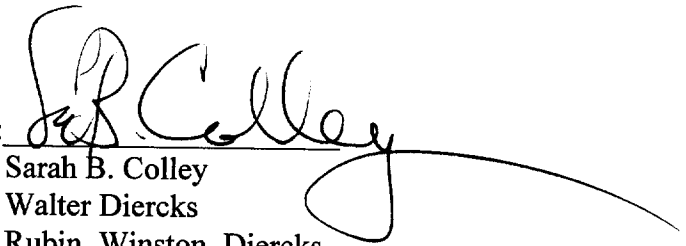
² This analysis still does not address the issue that the disposition of MRP's Tennessee subscribers requires the approval of the Bankruptcy Court.

Notice. To the extent that additional details are requested by the Authority, MRP will endeavor to respond in an expeditious manner to any such request.

Dated April 29, 1999

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "S B Colley", written over a horizontal line.

Sarah B. Colley

Walter Diercks

Rubin, Winston, Diercks,

Harris & Cooke, L.L.P.

1333 New Hampshire Ave., N.W., Ste. 1000

Washington, D.C. 20036

Telephone: 202.861.0870

Counsel to Minimum Rate Pricing, Inc.

Jerry C. Colley, Tenn. BPR #2375

Colley and Colley

P.O. Box 1476

Columbia, TN 38401

Telephone: 931.388.8564

Local Counsel for Minimum Rate Pricing, Inc

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Minimum Rate Pricing, Inc.'s Proposed Plan and letter to Mr. K. David Waddell were sent on April 29, 1999 by Federal Express for Friday, April 30, 1999 AM delivery to Mr. K. David Waddell, Executive Secretary, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37243-0505 and were faxed to K. David Waddell, Executive Secretary, Tennessee Regulatory Authority at 615-741-8953 prior to 4:30 PM on April 29, 1999 and were served on the following parties of record on April 29, 1999 by facsimile and U.S. First Class Mail by sending the facsimile copy to the facsimile machine of the recipient on April 29, 1999 and by depositing the mail copy in the United States mail, postage pre-paid on April 29, 1999:

Gary Hotvedt, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505
FAX: (615) 741-2336

L. Vincent Williams, Esq.
Deputy Attorney General-Consumer Advocate
Consumer Advocate Division
Second Floor
425 Fifth Avenue, North
Nashville, TN 37243
FAX: (615) 741-8724

Rochelle Weisburg, Esq.
Angel & Frankel, P.C.
460 Park Avenue
New York, NY 10022-1906
FAX: (212) 752-8393


Walter E. Diercks

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW**TENTH FLOOR****1333 NEW HAMPSHIRE AVENUE, N.W.****WASHINGTON, D.C. 20036**REC'D IN
REGULATORY AUTH.

APR 29 PM 4 28

OFFICE OF THE
TELEPHONE (202) 861-0870 FAX (202) 429-0657 SECRETARY**FAX TRANSMISSION COVER SHEET****TO: K. David Waddell, Executive Secretary
Tennessee Regulatory Authority****Gary R. Hotvedt, Esq.
Tennessee Regulatory Authority****L. Vincent Williams, Esq.
Consumer Advocate Division****Rochelle Weisberg, Esq.
Angel & Frankel, P.C.****FAX #: 615-741-5015
615-741-5015
615-741-8724
212-752-8393****CONF. #: 615-741-3191
615-741-3191
615-741-8723
212-752-8000****This telecopy transmission consists of 9 pages, including this page.****FROM: Walter E. Diercks****DATE: April 29, 1999****COMMENTS: Please deliver to addressee immediately upon receipt.****Confidentiality Notice**

The information contained in this facsimile message is intended only for the use of the individual or entity named below. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client privilege.

If a problem of clarity of transmission arises, please call Adrienne at (202) 861-0870.